

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 20-RC-271637

ANIMAL LEGAL DEFENSE FUND,

Employer

and

NONPROFIT PROFESSIONAL EMPLOYEES UNION,
IFPTE LOCAL 70,

Petitioner.

**NONPROFIT PROFESSIONAL EMPLOYEES UNION'S OPPOSITION TO ANIMAL LEGAL DEFENSE FUND'S
EMERGENCY MOTION FOR STAY OF MAIL BALLOT ELECTION**

Prepared by:

_____/s
Richard J. Bialczak

Counsel for Nonprofit Professional Employees
Union, IFPTE Local 70

March 12, 2021

Nonprofit Professional Employees Union, IFPTE Local 70 (hereinafter “Union”) requests that the National Labor Relations Board (“NLRB” or “Board”) deny the Emergency Motion to Stay Mail Ballot Election filed by Animal Legal Defense Fund (“ALDF”). Although ALDF accurately describes the circumstances by which Region 20 incorrectly delivered multiple ballots to each employee in the petitioned for unit (by including both Voting Group A and Voting Group B ballots to each employee regardless of their respective voting groups), its proposed remedy of delaying the election so that the Region may deliver yet another ballot would only further complicate the election.

I. Granting ALDF’s Motion Would Undermine the Election by Creating Further Confusion and Delay

As recounted in the Motion, the Region mailed ballots to all employees in the proposed unit on February 26. Unfortunately, the Region erred by mailing both Voting Group A and Voting Group B ballots to all employees, regardless of their respective voting groups. As a result, the parties are aware that all employees received the correct ballot – i.e., the ballot that corresponds to their voting group. Some employees additionally received one irrelevant ballot. There is no indication that any employee failed to receive the correct ballot for their voting group.

Upon being advised of the error, the Region discussed the matter with counsel to both parties. On March 3, the Region sent revised voting instructions to all employees via email instructing them as to which ballot to return, informing them that they could request a new ballot, and providing a number to call if they had questions. Importantly, employees in Voting Group A and Voting Group B were told specifically which voting group they were in and the corresponding ballot that they would need to return. Those revised instructions were included as attachments to ALDF’s motion.

There is no doubt that receiving multiple ballots injects a potential measure of confusion into the process and, as ALDF notes, both parties will have recourse to the challenge and objections procedures that any party has in the aftermath of an election. Where ALDF misses the mark, however,

is its proposed remedy: delaying the election, ordering the destruction of already mailed (and returned) ballots, and delivering a third, new ballot to all employees *would only result in additional potential confusion on the part of the employees.*

Indeed, using ALDF's hypothetical questions mode of argument:

1. What if, having received multiple ballots and multiple voting instructions, an employee is told to destroy their ballots and then provided another ballot with new voting instructions and throws their hands up at the process and declines to vote?
2. What if, having previously returned one or both ballots, an employee concludes that surely their vote has already been counted and does not return the new ballot?
3. What if an employee fails to destroy their previous ballots and, upon receiving the new instructions, returns the previous (at-that-time correct) ballot?
4. What if an employee returns the newest third ballot but uses the older return envelope?
5. What if an employee saves all the ballots and returns them all at the same time? What if the parties can determine that their vote has changed?

As with ALDF's proposed hypotheticals, the Union has no idea whether any of these scenarios will actually occur. Fortunately, both parties have the option of filing objections or challenges to the election once the vote count has been conducted and we can determine if the potential confusion has resulted in an actual problem, and whether that problem has the potential to change the outcome. It is in furtherance of the Board's policy to have that election as soon as possible and consistent with the original stipulation.

To be clear, ALDF is correct that the Region's mistake has injected potential confusion into the process. Where the Union differs is in ALDF's supposition that by delaying the election – in violation of Board policy – and delivering another ballot to employees, the potential confusion would be cured

rather than magnified. Rather, the correct approach is to determine whether any actual meaningful impact can be gleaned after conducting the election and dealing with such problems using the normal procedures available to the parties.

II. Conclusion

Based on the argument above, the Union respectfully requests that the Board deny the motion and permit the election to conclude as originally stipulated.

Respectfully submitted,

_____/s
Richard J. Bialczak
Counsel for the Union
48-18 Van Dam Street
2nd Floor
Long Island City, NY 11101
(202) 236-7259
rickbial@gmail.com

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 20**

ANIMAL LEGAL DEFENSE FUND

and

Case No. 20-RC-271637

NONPROFIT PROFESSIONAL
EMPLOYEES UNION,
IFPTE LOCAL 70

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Emergency Motion to Stay Mail Ballot Election was served on the following parties March 12, 2021:

Jill H. Coffman, Regional Director
NLRB Region 20
90-1 Market Street, Suite 400
San Francisco, CA 94103
Via Electronic Filing

Samuel Hoffmann, Field Examiner
National Labor Relations Board
Region 20
Samuel.hoffmann@nrlrb.gov
Via email

Matthew J. Kelley, Counsel
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
Matthew.kelley@ogletree.com
Via email

Sara E. Olschewske, Counsel
The Ogletree Building
300 North Main Street, Suite 500
sara.olschewske@ogletree.com
Via email

_____/s
Richard J. Bialczak
Counsel for NPEU, IFPTE Local 70

March 12, 2021